



CONSTITUTIONAL BASIS OF THE USE OF THE ARMED FORCES

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Purpose – Social unrest on the interior of the country (like actions of Egyptian Defense Minister on July 3rd, 2013 against the President of the Republic, Syrian Government actions against the participants in civil uprisings) raised the question on what means ascertain democratic military control or whether a democratic state can limit and control the use of the armed forces in a democratic way. This scientific research tries to analyze in a comparative aspect the constitutional status of the Head of the state, as the Commander-in-Chief of Military Forces, and Defense Minister in various countries with different types of government, as well as their capabilities to use the military forces. Means by the democratically elected state government to control military forces and to stop their illegal use is also analyzed;

Design/methodology/approach – the research uses the methodology of qualitative research. The method of document analysis was used to analyze legal acts of the highest authority – Constitutions – in order to receive the data about the constitutional status of the Head of the state as the Commander-in-Chief of Military Forces and Defense Minister in the system of state government institutions. The comparative method allows to unveil the similarities and differences of the provisions of valid constitutional editions in various countries, and also to compare them with Lithuanian constitutional regulations when making decisions on questions regarding the use and control of the armed forces. One of the main methods of systemic analysis helped to determine how the constitutional authorities of the Head of the state as the Commander-in-Chief and Defense Minister change when using the armed forces depending on the government type of the country;

Findings – when analyzing the constitutional basis of the use of the armed forces, the dynamics of military authority are revealed depending on the type of state government, but also one common feature is determined – the use of the armed forces



has to be sanctioned by the parliament as an institution embodying the representation of the nation. It has been argued that the military institutions in the democratic state cannot be assigned to the state government institutions but rather have a priority over them. On the contrary, military state institutions have to be accountable to civil state institutions and have to be controlled by them, and their decisions have to be based on the decisions of civil state institutions. A conclusion is made that in parliamentary republics (Lithuania, except Germany) and constitutional monarchies (United Kingdom) the Head of State usually is only a nominal Commander-in-Chief, and in the presidential (USA) and semi presidential (France) republics the Head of State has wide personal authority regarding the use of the armed forces. The constitutional status of Head of State, as a Commander-in-Chief, implicates its authority on the strategic level to lead the armed forces of the country and to appoint the highest ranking officials and officers in the military forces. Defense minister (secretary) spearheads his/her government area (Ministry (Department) of Defense) and together with the government is collectively responsible for it in the parliament (Lithuania, United Kingdom, Germany, France) or personally (Lithuania, France), and in the presidential republics – only to the Head of State (USA). Minister of Defense is usually assigned not the questions of the management of military forces, but the management questions relating to the determination of the structure of military forces, training, convocation and so on;

Research limitations/implications – the research analyzes what are the constitutional basis of the use of the armed forces in the countries of different government types (by keeping only to classic democratic states - USA, United Kingdom, France, and Germany), but it does not take into account the political, social, or economic factors which might potentially influence the decisions regarding the military actions. Additionally, the main analysis is based on only the review of national legal acts, excluding the international law;

Practical implications – the outcomes of the research may be used in the future when making decisions on resolving various military conflicts that arise not necessarily among the states, but also on the interior of the states themselves, as is evidenced by the international events over the last couple of months (eg. in Egypt or Syria). In order to come to peace and reinstating the security in countries such as these when there is a lack of diplomatic means, a question has to be solved regarding the use of military force;

Originality/Value – the comparative analysis of constitutional basis of the use of the armed forces is not encountered in the works of Lithuanian Law Scholars. But the military



authority has been analyzed by the authors in other countries: Barnett, H. (2004), Stokes Paulsen, M. (2009), Yasuo, H. (2012), J. Paust, J. (2012) et al.

The originality of scientific research is composed of the fact that for the first time the military authority of the Head of State as a Commander-in-Chief and the Minister of Defense are comparatively analyzed, and according to the outcomes of this analysis the Lithuanian legal regulation and constitutional basis of the use of the armed forces are evaluated. The outcomes of the research can be useful (i) in order to understand and determine what is the constitutional basis of the use of the armed forces; (ii) when studying the discipline of Lithuanian Constitutional Law or Comparative Constitutional Law when the students are introduced to the constitutional status of the Head of State as a Commander-in-Chief;

Keywords: State President as the Commander-in-Chief, defense minister, Supreme Commander of the armed forces, Constitution;

Research type: general review.